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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,830

09/23/2003

James L. Freeby

2032.2.1

4985

36491

7590

12/23/2004

KUNZLER & ASSOCIATES
8 EAST BROADWAY
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EXAMINER

KATCHEVES, BASIL S

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,830

Applicant(s)

FREEBY ET AL.

Examiner

Basil Katcheves

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 090904
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1-4, 12-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 237,172 to Dentler.

Claims 1-4, 12-14 and 16 are rejected as in the previous office action for disclosing a bentonite barrier.

Regarding amended claims 1 and 13, in addition, Stuber does not disclose the bentonite as being exposed to the above ground environment. Dentler discloses a pole protector ringed around a pole and located at ground level (fig. 2: D). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by placing the protective bentonite rings at the ground surface, as disclosed by Dentler to help firmly anchor the post to the ground (Dentler, lines 52-53).

Claims 5-10, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 237,172 to Dentler. Claims 5-10, 17 and 19 are rejected as in the previous office action for disclosing a bentonite barrier. Claims 11, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 237,172 to Dentler further in view of U.S. Patent No. 5,048,605 to Toon et al. as in the previous office action for disclosing a bentonite barrier.

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Regarding amended claim 20, additionally, Stuber does not disclose the bentonite as being exposed to the above ground environment. Dentler discloses a pole protector ringed around a pole and located at ground level (fig. 2: D). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Stuber by placing the protective bentonite rings at the ground surface, as disclosed by Dentler to help firmly anchor the post to the ground (Dentler, lines 52-53).

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,946,569 to Stuber in view of U.S. Patent No. 237,172 to Dentler further in view of U.S. Patent No. 6,399,544 to Fairchild et al. for reasons cited in the previous rejection for disclosing a bentonite barrier.

Response to Arguments

Applicant's arguments filed 11/12/04 are moot under new grounds of rejections.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to pole protectors in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is

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(703) 306-0232. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (703) 308-0832.

BK


Basil Katcheves

12/20/04

Examiner, AU 3635